

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

COMMENTS OF PUERTO RICO TELEPHONE COMPANY, INC.

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Puerto Rico Telephone Company, Inc. (“PRT”) fully supports the Federal Communications Commission’s (“FCC” or “Commission”) tentative conclusion to adopt a non-rural insular high-cost support mechanism based upon actual costs. *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, WC Docket No. 05-337 (Dec. 9, 2005) (“*Notice*”).¹ The Commission should adopt this mechanism to satisfy its section 254 mandate to ensure affordable and ubiquitous telecommunication services in rural, *insular*, and high-cost areas. 47 U.S.C. § 254. The Commission rightfully recognizes that this mandate has not been met to date for all insular areas, and that targeted action is necessary to ensure the residents of non-rural insular areas have access to high-quality, modern, and affordable telecommunications and information services. The FCC should be commended for its move to fulfill this statutory obligation.

¹ PRT limits its comments to the Commission’s proposed non-rural insular mechanism as that proposal directly affects Puerto Rico. *Notice*, ¶¶ 30-38. The Commission’s comprehensive review of the broader non-rural mechanism addresses national policy issues primarily affecting mainland-based areas. PRT does not comment on the application of the non-rural mechanism to mainland states, nor does PRT address the specific questions related to the United States Court of Appeals for the Tenth Circuit’s remand decision. *Qwest Commc’ns Int’l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

I. INTRODUCTION AND SUMMARY

The Commission should adopt its tentative conclusion to establish a separate insular universal service mechanism as proposed in the *Notice* to address the critical universal service deficit in Puerto Rico. PRT applauds the Commission for recognizing in this proceeding the need to correct this conspicuous gap in its implementation of the Telecommunications Act of 1996 (“1996 Act” or “Act”). To that end, FCC Chairman Kevin Martin has explicitly stated that action to address the universal service needs of insular areas has “been overdue.” Transcript of FCC Open Agenda Meeting at 8, Dec. 9, 2005. Specifically, PRT strongly supports the Commission’s tentative conclusion that section 254 provides the Commission with the authority, and corresponding obligation, to establish a support mechanism for non-rural insular areas based on actual costs.

The *Notice* explains that the geography, demographics, and economy of Puerto Rico pose significant challenges to all telecommunications providers serving the island and underscores why Congress singled out insular areas for focused support in the Act. Providing telephone service to an island community is inherently arduous, requiring the costly shipping of all necessary materials, as well as substantial efforts to prevail over numerous additional climatic and topographic challenges. Moreover, the need for affirmative federal action is evident because over one half of the island lives below the poverty line and the median per-capita income is only \$16,800 – dramatically less than even the poorest U.S. state. These low income levels are exacerbated by the cost of living, which is significantly higher than on the mainland. The inadequacy of basic infrastructure on the island, where some 200 isolated communities still lack telephone service, further adds to the challenges faced by telecommunications providers in achieving universal service in Puerto Rico equivalent to mainland levels.

The clearest manifestations of the failure of the current universal service policies can be seen in the recent, dramatic funding reduction in Puerto Rico under the non-rural high-cost loop support mechanism as well as in the declining wireline subscribership levels on the island. Prior to the adoption of the non-rural high-cost mechanism, Puerto Rico received approximately \$50 million in annual high-cost loop support. This support level has, however, been eliminated entirely due to the regrettable application of the non-rural mechanism to non-rural insular areas. That mechanism, which serves mainland states reasonably well, produces disastrous results in Puerto Rico because it fails to incorporate insular-specific costs and characteristics. PRT's actual costs are in excess of two standard deviations above what the non-rural mechanism predicts.

Prior to the 1996 Act, federal universal service support contributed directly to the substantial improvement in wireline penetration in Puerto Rico from less than 25 percent to over 70 percent. The absence of sufficient affirmative federal support since 2000 has coincided with the stagnation in wireline subscribership levels in Puerto Rico. Today, in the wake of the termination of high-cost support, wireline subscribership in Puerto Rico is approximately 30 percent below the national average. This disparity alone merits affirmative federal support, yet these statistics underestimate conditions in Puerto Rico. The local regulator (the Telecommunications Regulatory Board of Puerto Rico ("TRB")) has noted that the penetration rate in many rural and isolated communities is even further below mainland norms – less than 50 percent in some remote areas.

All of these statistics underscore the TRB's finding that the "government and people of Puerto Rico need the FCC's help to meet ... the economic, educational, and technological standards designed for the mainland United States." Letter from Miguel Reyes Davila,

President, TRB, to Kevin J. Martin, Chairman, FCC, CC Docket No. 96-45, at 1 (Apr. 15, 2005) (“*TRB Letter*”). Accordingly, the Commission should establish the insular mechanism based on actual costs proposed in the *Notice*. A separate insular fund – patterned after, but not affecting, the current mechanism for rural carriers – presents the best opportunity to ensure that universal service is preserved and advanced in Puerto Rico. This proposal is superior to any efforts to create a new type of mechanism with its attendant delays and uncertain effect.

The new insular mechanism would provide PRT with approximately \$33 million in annual support, significantly less than Puerto Rico received before the establishment of the non-rural mechanism. As such, PRT’s support would not have a material effect on the total high-cost universal service program, nor would the adoption of a non-rural insular mechanism prejudice any future efforts to reform more comprehensively the high-cost fund.

The Commission should, therefore, affirm in an expedited manner its tentative conclusion to establish a non-rural insular high-cost loop mechanism to provide support based upon carriers’ actual costs. This action would preserve and advance universal service in Puerto Rico and formally correct policy judgments dating back ten years which have, in hindsight, proven to be inconsistent with the statute’s and the Commission’s universal service goals.

II. THE COMMISSION CORRECTLY HIGHLIGHTS ITS STATUTORY OBLIGATION TO ENSURE THAT UNIVERSAL SERVICE POLICIES ADDRESS THE UNIQUE NEEDS OF INSULAR AREAS

The 1996 Act requires that the Commission’s universal service policies address the unique needs of insular areas. As the *Notice* plainly states, “through section 254(b), Congress intended that consumers in insular areas ... have access to affordable telecommunications and information services.” *Notice*, ¶ 33. Subsequent to the 1996 Act, the Commission has repeatedly affirmed the need for insular-specific solutions in light of the statutory mandate as

well as the unique operating conditions in insular areas. An analysis of the geographic, climatic, and economic realities of insular areas corroborates fully the *Notice*'s finding that an insular-specific universal service mechanism is warranted.

A. Section 254 Compels Heightened Protection for Consumers in Insular Areas

The *Notice* explains that, by enacting section 254, Congress intended that consumers in insular areas have access to affordable telecommunications and information services. *Notice*, ¶ 33. In fact, section 254 creates an affirmative obligation on the Commission both to preserve and advance universal service in insular areas. The inclusion of insular communities within those areas requiring the heightened attention of targeted universal service support – along with rural and high-cost areas – evidences Congress's unambiguous intent that the FCC act with particular vigilance in establishing its universal service policies with respect to insular areas.

The Hispanic Technology and Telecommunications Partnership (“HTTP”), a coalition of nineteen national and regional Hispanic organizations, has called for FCC action on insular funding given these “special considerations built into the Telecommunications Act for insular areas.” Letter from Manuel Mirabal, HTTP Founder and Co-Chair, to Michael K. Powell, FCC Chairman, CC Docket No. 96-45, at 2 (Oct. 28, 2004) (“*HTTP Letter*”). Specifically, section 254(b)(3) directs the agency to adopt universal service policies upon the principle that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, *insular*, and high cost areas, should have access to telecommunications and information services.” 47 U.S.C. § 254(b)(3) (emphasis added). The Act further requires that the Commission design support mechanisms that provide “specific, predictable and sufficient” universal service funding. *Id.* § 254(b)(5).

This statutory recognition necessitates more individualized treatment by the Commission for insular areas than has been afforded to date, and highlights that national policies of general applicability may not be adequate to ensure universal service in insular areas.² Bedrock statutory construction principles compel the conclusion that the Commission must address the unique conditions of rural, insular, and high-cost areas in its universal service policies, and may not pick and choose which components of the statute’s enumerated list to implement.³

Consistent with section 254, the Commission has adopted two explicit high-cost loop mechanisms to provide support for rural carriers and non-rural high-cost carriers.⁴ In the *Rural*

² It is important to note that, prior to 1996, rural, insular, and high-cost areas received support under the FCC’s pre-existing universal service program, underscoring that Congress’s explicit reference to these communities in the Act demonstrates an affirmative obligation on the Commission going forward – beyond mere inclusion in the universal service program – to design and target its universal service policies for insular areas. *See* Federal-State Joint Board, *Monitoring Report*, CC Docket No. 87-339, at 151 (Table 3.8) (May 1997) (explaining that from 1993 through 1995, insular areas received significant high-cost support: Puerto Rico (\$35 million), the U.S. Virgin Islands (\$37 million), and the Northern Mariana Islands (\$4 million)).

³ *See Adams Fruit Co. v. Barrett*, 494 U.S. 638, 645 (1990) (noting the “basic principle[] of statutory construction that require[s] giving effect to the meaning and placement of the words chosen by Congress”); *Regions Hosp. v. Shalala*, 522 U.S. 448, 467 (1998) (“It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word.”); *U.S. Telecom Ass’n v. FCC*, 227 F.3d 450, 463 (D.C. Cir. 2000) (noting the “well-accepted principle of statutory construction that requires every provision of a statute to be given effect”).

⁴ *See, e.g., Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”) (establishing the non-rural high-cost mechanism directed at ensuring that high-cost areas receive sufficient and predictable support levels). As a legal matter, the Act does not require the adoption of three individual mechanisms for rural, insular, and high-costs areas. *See Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-cost Universal Service Support*, Public Notice, 19 FCC Rcd 16083, ¶ 9 (2004) (“*2004 Public Notice*”). Yet, in practice, the FCC has found – and this *Notice* maintains – that a single high-cost mechanism may not be able to reflect properly the unique costs of rural and insular areas, thus necessitating separate mechanisms. At a minimum, no such all-inclusive mechanism has been proposed to date.

Task Force Order, the Commission explained that a separate universal support mechanism for rural carriers was warranted to “ensure that the support provided to rural carriers ... is specific, predictable, and sufficient.” *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, ¶ 10 (2001) (“*Rural Task Force Order*”).

Both the TRB and the Puerto Rico Resident Commissioner have demonstrated that the FCC has both the authority and the obligation to adopt a high-cost support program for insular areas.⁵ This proceeding provides a clear opportunity to do so, thereby remedying Commissioner Michael Copps’ finding that “the Commission has failed over time to give this phrase [insular areas] full meaning.” *Federal-State Joint Board on Universal Service*, Order on Reconsideration, 19 FCC Rcd 23824, 23846 (2004) (“*Order on Reconsideration*”), Concurring Statement of Comm’r Michael J. Copps.

B. The FCC Has Repeatedly Recognized the Unique Conditions Facing Insular Areas and the Statutory Need for Action

Since the passage of the 1996 Act, the FCC and the Federal-State Joint Board on Universal Service (“Joint Board”) have acknowledged the unique needs of insular areas as well as “Congressional intent ... support[ing] the adoption of special mechanisms by which to calculate support for insular areas.” *Rural Health Care Support Mechanism*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd

⁵ *TRB Letter* at 1 (finding that “the Act requires the FCC to enact a support mechanism that takes into account such characteristics of insular areas”); *see also* Letter from Rep. Luis G. Fortuno, Resident Commissioner of Puerto Rico, to Kevin Martin, FCC Chairman, CC Docket No. 96-45, at 2 (Apr. 13, 2005) (“*Fortuno Letter*”) (highlighting “Congress’ mandate in the Telecommunications Act of 1996 that the agency’s universal service policies ensure that citizens in insular areas have access to telecommunications services comparable to those in urban areas”).

24613, ¶ 42 (2004). This *Notice* provides a clear opportunity for the Commission to utilize the significant factual record it has developed over the last decade in support of targeted universal service action for insular areas.

In its First Recommended Decision, the Joint Board stressed its obligation “to consider consumers of insular areas ... when developing support mechanisms for consumer access to telecommunications and information services.” *Federal-State Joint Board on Universal Service, Recommended Decision*, 12 FCC Rcd 87, ¶ 430 (1996) (“*First Recommended Decision*”). The Joint Board further “recognize[d] the special circumstances faced by carriers and consumers in the insular areas of the United States,” pointing specifically to the increased costs of shipping and annual damage from tropical storms.⁶ In the *First Report and Order*, the FCC also acknowledged the formidable challenges facing insular areas: “insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations.” *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, ¶¶ 112, 314, 414 (1997) (“*First Report and Order*”). In light of those conditions, the FCC pledged to “examine ways to improve subscribership in ... areas” where penetration rates were “particularly low,” specifically citing Puerto Rico. *Id.*, ¶ 415.

In 1999, the FCC opened a new proceeding to examine areas with low penetration rates, particularly insular areas and tribal lands. In that proceeding, the agency noted that “[t]elephone penetration rates among low-income consumers, and in insular, high-cost, and tribal lands lag behind the penetration rates in the rest of the country.” *Federal-State Joint Board on Universal*

⁶ *First Recommended Decision*, ¶ 434; see Section II.C. for further discussion of the unique operating conditions in insular areas.

Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, ¶ 5 (1999) (“*Unserved and Underserved Areas Notice*”). The FCC further found that “subscribership levels are below the national average in ... certain insular areas.” *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 32 (2000) (“*Twelfth Report and Order*”). Despite the record developed in the 1999 proceeding, the Commission has acted to date only with respect to the tribal lands portion of that proceeding. *Id.*, ¶¶ 32-33. Nevertheless, the FCC again pledged to “continue to examine and address the causes of low subscribership in other areas and among other populations, especially among low-income individuals in ... insular areas.” *Id.*, ¶ 11.⁷

Most recently, in November 2004, all three sitting Commissioners offered their clear support for the creation of a distinct insular mechanism. Specifically, FCC Chairman (then Commissioner) Kevin Martin urged immediate action to provide insular areas with actual cost-based universal service support because “[t]he record demonstrates the unique challenges facing insular areas, such as Puerto Rico.” *Order on Reconsideration*, at 23847, Dissenting Statement of Comm’r Kevin J. Martin. Commissioner Michael Copps agreed that the Commission was “long past due to address [the insular] aspect of the [Telecommunications Act] and incorporate this concept in [the] universal service support system.” *Id.*, at 23846, Concurring Statement of

⁷ Consistent with the findings of the FCC and Joint Board, the Rural Task Force further recognized a number of substantial operational barriers to providing service in insular areas, including severe weather and shipping costs. Rural Task Force, *The Rural Difference: Rural Task Force White Paper 2*, at 26-29 (Jan. 2000) (“*White Paper 2*”).

Comm’r Michael J. Copps. Commissioner Jonathan Adelstein also noted that he hoped that the Commission would move forward “expeditiously” in its consideration of the “sufficiency of support for carriers in insular areas.” *Id.*, at 23848, Concurring Statement of Comm’r Jonathan S. Adelstein. Despite this compelling record and clear Commission support, no action to adopt the necessary support mechanism for insular areas has been taken to date. Concern over this inaction has been expressed by both national congressional leaders and Puerto Rico officials.⁸ We applaud the Commission for recognizing the need to address this omission and urge it to move swiftly in doing so.

C. Insular Areas Have Unique Characteristics Warranting Targeted Commission Action

The *Notice* notes “the unique challenges” faced by insular carriers that clearly differentiate their operations from those on the mainland. *See Notice*, ¶ 33. An analysis of conditions in insular areas fully corroborates this finding. Insular areas have operational realities that are clearly distinguishable from those experienced on the mainland, including both geographic and economic distinctions. These unique conditions underscore HTTP’s contention that “Puerto Rico cannot be viewed through a mainland prism.” *HTTP Letter* at 2.

1. Carriers in Insular Areas Face Substantial Geographic and Climatic Challenges

The most significant difference between insular and mainland areas is that insular areas are, by definition, separated from the rest of the United States by hundreds (and sometimes thousands) of miles of ocean. The governments of Guam, the Virgin Islands, and Puerto Rico

⁸ *See* Letter from Daniel K. Inouye, United States Senator from Hawaii, to Michael K. Powell, FCC Chairman (Sept. 18, 2001) (highlighting that “[i]nsular areas are in need of assistance,” and that he was “concerned that the docket has been open since September, 1999, without resolution” with respect to the universal service rural health care mechanism); *see also Fortuno Letter*.

have each emphasized to the FCC their significant shipping-related costs, because all the supplies necessary for creating and maintaining a telecommunications infrastructure must be shipped and stored at considerable expense.⁹ The topography of insular areas further increases operational costs. For example, the sparsely populated inland areas of Puerto Rico have rough, hilly terrain and heavy tropical vegetation, which results in “telecommunications transmission facilities requir[ing] additional guying and anchoring and the distances between points [being] increased.”¹⁰ Due to these operating realities, many parts of insular areas lack the necessary infrastructure – *i.e.*, electricity, paved roads – further complicating telecommunications availability and reliability. *White Paper 2*, at 27.

The Rural Task Force confirmed that the “geographic isolation of these areas contributes significantly to the higher comparative cost to build and maintain telephone plant. The movement of materials, manpower and equipment into these areas can significantly increase initial construction, as well as ongoing operational costs.” *Id.* Because of these unique geographical challenges, insular carriers are forced to maintain a larger inventory of supplies and repair parts. These importation needs are not limited to supplies and equipment: technicians and experts from the mainland often must be brought to the islands for maintaining and installing equipment, as well as training island-based personnel.

The climate in insular areas is also a major factor in the escalation of carrier costs. Salt air and water are “corrosive and inhospitable to telecommunications equipment,” leading to

⁹ See Comments of the Public Service Commission of the United States Virgin Islands, CC Docket No. 96-45, at 3-4 (Dec. 17, 1999) (“*VIPSC Comments*”); Comments of the Government of Guam, CC Docket No. 96-45, at 3 (Dec. 17, 1999); *TRB Letter* at 2.

¹⁰ See *VIPSC Comments* at 4; see also Comments of PRT, CC Docket No. 96-45, at 6-7 (Dec. 17, 1999) (“*PRT Underserved Comments*”).

accelerated deterioration of equipment. *VIPSC Comments* at 4. Severe tropical weather in the Caribbean requires seemingly annual reconstruction of existing infrastructure due to tropical storm and hurricane damage.¹¹ The high probability for such damage requires PRT to either self-insure or seek out prohibitively expensive insurance policies: the annual premium for a single PRT insurance policy covering wind damage costs \$1.25 million. Taken as a whole, these geographic and climatic challenges place carriers serving insular areas at a severe disadvantage – both in terms of cost and complexity – to mainland-based providers.

2. *Economic Conditions in Insular Areas Provide Further Challenges to Providing Affordable Service*

Carriers serving insular areas face unique demographic challenges that substantially affect their ability to raise the necessary resources to provide affordable high-quality telecommunications and advanced services. The geographic and climatic challenges described above result in a disproportionately high cost of living for consumers in insular areas, resulting in significantly less disposable income. Specifically, the cost of living index for Puerto Rico is 133.8, more than 30 points higher than the U.S. national average cost of living.¹²

The high cost of living can be seen in the increased cost of basic commodities.

Electricity costs in Puerto Rico are 70 percent greater than those on the mainland. *See Estudios*

¹¹ *VIPSC Comments* at 4; *PRT Underserved Comments* at 7-8. *See also Federal-State Joint Board on Universal Service*, Order, FCC 05-178, ¶ 2 (Oct. 14, 2005); *Comments of Puerto Rico Telephone Company, Inc.*, CC Docket No. 96-45, at 7-8 (Dec. 17, 1999). For example, in 1999, Hurricane George caused more than \$80 million in damages to PRT facilities. In 2004, Hurricane Jeanne caused \$9.2 million in damage. *See, e.g.*, Letter from Nancy J. Victory, Counsel for PRT, to Jeffrey Carlisle, Chief, Wireline Competition Bureau, CC Docket No. 96-45, at 2 (Mar. 28, 2005) (“*2005 PRT Letter*”); *Petition for Clarification and/or Reconsideration of the Puerto Rico Telephone Company, Inc.*, CC Docket No. 96-45, at 9 fn. 19 (Jan. 14, 2004).

¹² *PRT Underserved Comments* at 10; *PRT White Paper: Proposed Interim Insular Mechanism*, CC Docket No. 96-45, at 18 (May 6, 2005) (“*Insular White Paper*”).

Tecnicos Inc., *Economic Conditions: Puerto Rico and the United States*, at 2 (Jan. 31, 2006).

Similarly, the cost of basic consumer goods is far greater. For example, a Honda Pilot costs 21.1 percent more in Puerto Rico than in the United States. *Id.* at 8.

In stark contrast, consumer incomes in insular areas are markedly lower than those on the mainland. The per-capita income of Puerto Rico is approximately two-thirds that of the poorest U.S. state.¹³ Indeed, more than half of Puerto Rico's residents live below the poverty line. *PRT Underserved Comments* at 8-9. The relative poverty of insular areas vis-à-vis the mainland is evident through an analysis of the number of low-income Lifeline customers compared to the total number of residential lines in a state: Puerto Rico's proportion of Lifeline lines is almost double the national average, and as great as ten times that of some of the poorest mainland states.¹⁴

The combination of low per-capita income and a dramatically higher cost of living results in significantly less disposable income for residents of insular areas.¹⁵ The lack of disposable

¹³ *PRT Underserved Comments* at 8-9. Based on 2003 data, the per capita income of the United States is \$34,459. Puerto Rico is estimated to have a per capita income of \$16,800, or approximately two-thirds the income level of the poorest state, Mississippi (\$23,343). *See 2005 PRT Letter* at 2; *Comments of the Commonwealth of the Northern Mariana Islands*, CC Docket No. 96-45, Exhibit at 3 (Dec. 17, 1999) ("*CMNI Comments*") (noting that the yearly per capita income of individuals in the Northern Mariana Islands is \$6,897).

¹⁴ FCC, Wireline Comp. Bur., Indus. & Analysis Div., *Trends in Telephone Service*, at 7-4, 19-13 (Tables 7.2, 19.9) (rel. June 21, 2005) ("*Trends in Telephone Service*") (finding that 7.1 percent of total access lines in Puerto Rico are Lifeline lines (87,953 out of 1,242,555 total lines) compared to 3.8 percent of lines nationwide (6,637,817 out of 173,136,837 total lines), and only 0.9 percent in Louisiana (21,763 out of 2,388,005 total lines)). Note that these statistics include actual Lifeline customers, which is fewer than the number of eligible Lifeline customers. In all, the FCC has estimated nationally that only one-third of households eligible for Lifeline/Link-Up assistance actually enroll. *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, ¶ 1 (2004) ("*Lifeline and Link-Up Order*").

¹⁵ *VIPSC Comments* at 5 (finding that the average disposable income in the U.S. Virgin Islands is 60 percent of that of the mainland).

income bears directly on the ability of carriers to raise rates to fund network improvements, and also negatively effects the ability of state commissions serving insular areas to establish robust state universal service programs. *See infra*, Section III.B.

Similar considerations influenced the Rural Task Force's recommendation to maintain a rural-focused support mechanism. Specifically, they explained that economic demographics create challenges for carriers serving rural areas, noting that the per capita income in rural areas (\$31,000) was significantly lower than that in non-rural areas (\$38,000). *White Paper 2* at 13. With respect to financial resources available to end-user customers, the challenges faced in insular areas are equal to, if not greater than, those confronting rural carriers.

The unique challenges faced in insular areas are further highlighted by the large number of persons in Puerto Rico living below the poverty line. The percentage of consumers under the poverty line in Puerto Rico far eclipses any mainland norms – the TRB has found that 58.9 percent of the population of Puerto Rico lives below the poverty line. Comments of the Telecommunications Regulatory Board of Puerto Rico, CC Docket No. 96-45, at 4 n.10 (Aug. 14, 2000). The U.S. Census Bureau's more recent analysis corroborates the uniqueness of Puerto Rico, finding that nationwide only 12.4 percent of consumers live below the poverty line.¹⁶ The economic demographics of Puerto Rico create unique hurdles to PRT's ongoing efforts to ensure that consumers receive affordable and high-quality services. All of these factors strongly

¹⁶ U.S. Census Bureau, *Areas with Concentrated Poverty: 1999*, Census 2000 Special Reports CENSR-16, at 1, 4, Table 1 (July 2005) (finding that in 72.6 percent of the census tracts in Puerto Rico over 40 percent of the population lives below the poverty line. The next highest jurisdiction is Washington D.C., in which only 11 percent of census tracts have comparable poverty levels.).

underscore the need for a universal service mechanism designed to address the significant and unique needs of insular areas.

D. The Commission Should Adopt Its Tentative Definition of “Insular Areas”

PRT agrees with the FCC’s tentative conclusion – initially proposed in the *Unserved and Underserved Areas Notice* – that “insular areas” should be defined as “islands that are territories or commonwealths of the United States.” See *Unserved and Underserved Areas Notice*, ¶ 137; *Notice*, ¶ 38. While the Act itself does not define “insular,” commenters in the *Unserved and Underserved Areas* proceeding generally agreed with this definition, which encompasses all of the areas that have historically been considered insular: Guam, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, and the U.S. Virgin Islands.¹⁷ The FCC should adopt its proposed definition, which is consistent with the definition used in other federal statutes and by the United States Department of Interior, the federal agency responsible for insular area administration.¹⁸

¹⁷ Comments of the National Telephone Cooperative Association, CC Docket 96-45, at 31 (Dec. 17, 1999) (“supports the Commission’s proposed definition of insular areas to include territories or commonwealths of the United States”); *CMNI Comments* at 12 (same). The exclusion of Hawaii from this definition is not significant because Hawaii has never been a high-cost jurisdiction under either actual costs or the forward-looking cost support mechanism.

¹⁸ See Dep’t of Interior, Office of Insular Affairs, *Definitions of Insular Area Political Organizations*, http://www.doi.gov/oia/Islandpages/political_types.htm (last visited Mar. 23, 2006); see *Unserved and Underserved Areas Further Notice*, ¶ 137 n.254; see also Low-Income Home Energy Assistance Act, 42 U.S.C. § 8623(b) (defining “insular areas” to include Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands and excluding the Freely Associated States); 42 U.S.C. 6241(j) (defining “insular area” to include Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Freely Associated States of the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, but distinguishing the “insular areas of United States” from the “[F]reely [A]ssociated States”).

III. THE INCLUSION OF NON-RURAL INSULAR CARRIERS UNDER THE GENERAL NON-RURAL HIGH-COST MECHANISM FAILS TO REFLECT THE TRUE COSTS OF PROVIDING SERVICE TO INSULAR COMMUNITIES

Significantly, the Commission acknowledges that the goal of providing consumers in all insular areas with affordable telecommunications services “is not being met.” *Notice*, ¶ 33. The *Notice* explains further that “PRT[] is the only incumbent carrier serving a high-cost insular area that is not currently classified as a rural carrier under the rural high-cost loop mechanism.” *Id.* ¶ 34. The uniqueness of Puerto Rico’s regulatory classification and the inability of current policies to satisfy section 254 are unmistakably linked. The anomaly of Puerto Rico’s classification can be traced back to predictive judgments made in the *First Report and Order* that in hindsight were incorrect, and that the current Commission is rightfully seeking to correct in this proceeding.

The Commission also finds in the *Notice* that the continued inclusion of Puerto Rico within the non-rural high-cost mechanism, designed for and based upon mainland assumptions and inputs, is particularly problematic. Because the non-rural mechanism depends upon inputs not accurately available in insular areas like Puerto Rico, and does not take into account the unique costs associated with serving insular areas, the Commission should discontinue its use for all insular areas, including Puerto Rico.

A. PRT Is the Only Insular Carrier Required To Receive Support Under the Non-Rural High-Cost Loop Mechanism

PRT is the sole insular carrier operating under the non-rural universal service fund, and experience has shown that PRT does not belong within the non-rural categorization.¹⁹ The

¹⁹ The uniqueness of Puerto Rico is further evidenced by the fact it is one of only four jurisdictions in which all incumbent LECs are non-rural carriers. *Trends in Telephone Service at*

unique operational challenges faced by insular carriers, including PRT, preclude Puerto Rico from benefiting from the economies of scale present on the mainland. The widespread poverty on the island, the disproportionate cost of living and operating costs, and the lack of significant high-density population centers substantially complicate PRT's operating conditions. See Section II, *supra*. As a result, penetration rates in Puerto Rico are well below the national average, and Puerto Rico's network serves fewer households than its potential customer base would suggest. These island realities demonstrate that the relative size of an insular carrier cannot overcompensate for the limitations inherent in serving an insular community, limitations explicitly recognized by Congress.²⁰

Nonetheless, in the *First Report and Order*, the FCC declined a request to include Puerto Rico with all other high-cost insular areas under the actual cost mechanism, stating that "large telephone companies such as [PRT] *should* possess economies of scale and scope to deal efficiently with the cost of providing service in their areas, and thus, the level of that support will be determined through a forward-looking mechanism." *First Report and Order*, ¶ 315 (emphasis

19-20 (Table 19.6). Yet, Puerto Rico shares little in common with the other three: Delaware, the District of Columbia, and Rhode Island.

²⁰ This principle that insular characteristics have greater significance than carrier size with respect to the appropriate manner in which to determine eligibility for high-cost support has been addressed most recently in the Joint Board's review of the rural mechanism. See *2004 Public Notice*. For instance, Joint Board Member Billy Jack Gregg's Three Stage Package would transition large rural carriers to the non-rural mechanism, but "[b]ecause of their unique characteristics, Alaska and insular areas would also be exempted from this requirement. In other words, large rural carriers in these areas would continue to use the current modified embedded cost methodology." *Federal-State Joint Board on Universal Service Seeks Comment On Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, Public Notice, at 9 (Aug. 17, 2005) ("*Joint Board 2005 Notice*"); see also Comments of CTIA on Joint Board High Cost Proposals, CC Docket No. 96-45, at iii (Sept. 30, 2005) (suggesting that "non-contiguous states and territories" regardless of their operating size should "remain under the embedded cost support" mechanism, while large mainland rural carriers should be transitioned to the non-rural fund).

added); *see Notice*, ¶ 30 n.85. The Commission has never found subsequently that PRT actually possesses these economies of scale and scope, nor that its conditions are comparable to similarly sized carriers on the mainland.

B. The Non-Rural High-Cost Mechanism Cannot Accurately Reflect Insular Costs

The Commission's *Notice* recognizes that geographic, climatic and demographic issues unique to islands – described in greater detail in Section II – prevent the non-rural mechanism from producing accurate funding levels for insular carriers. *Notice*, ¶ 31. Specifically, the current shortcomings in the Commission's high-cost policies with respect to non-rural insular areas stem from the fact that the non-rural high-cost mechanism was designed for mainland carriers with mainland data inputs. As such, this mechanism does not reflect the unique conditions of insular areas. *See, e.g., Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, 14 FCC Rcd 20156, ¶ 299 (1999).

The TRB has explained in detail that it is “evident that models based on mainland assumptions do not translate when applied to insular areas, because their emphasis on line density, population density and economies of scale are inapplicable.” *TRB Letter* at 3. The Commission itself asked ten years ago “[h]ow should support be calculated for those areas (e.g., insular areas and Alaska) that are not included under the proxy model,” but insular concerns were never appropriately addressed in subsequent decisions. *Common Carrier Bureau Seeks Further Comment on Specific Questions in Universal Service Notice of Proposed Rulemaking*, Public Notice, DA 96-1078, Attach. 1, Question 41 (July 3, 1996). The inability of the non-rural

mechanism to reflect accurately insular costs was obscured by the fact that only one high-cost incumbent carrier (PRT) is eligible to receive support under this mechanism.

In this *Notice*, through its support for a non-rural insular mechanism, the Commission reaffirms the findings of the Joint Board and the Rural Task Force that the current non-rural mechanism is ill-suited for insular communities. The Joint Board has advised the Commission that, “while we believe that proxy models may provide an appropriate determination of costs on which to base high cost support, we are less certain that they may do so for rural carriers in Alaska and insular areas.” *First Recommended Decision*, ¶ 298. The Rural Task Force further found that:

[w]ith respect to insular areas ... there is currently no data in the model available to develop costs for these areas. In order to rectify this situation, extensive data gathering would be required that would include, but not be limited to: exchange boundaries; tandem locations; soil, water depth and other geographic data; data equivalent to census data; and road data for geocoding surrogates. At present, there does not appear to be an application of the model for insular areas. Rural Task Force, *A Review of the FCC’s Non-Rural Universal Service Fund Method and the Synthesis Model for Rural Telephone Companies: Rural Task Force White Paper 4*, at 22 (Sept. 2000).

In particular, specific inputs and assumptions in the non-rural mechanism cause it to produce disparate results for PRT in critical calculations. As a threshold matter, the majority of inputs used in the non-rural mechanism are national averages, and are not company specific (*e.g.*, copper and fiber cable cost, digital loop carriers, switching, engineering, furnishing, and installation costs). See Appendix A, Declaration of David C. Blessing, at 5 (“*Blessing Declaration*”). These national averages grossly underestimate the costs faced by PRT for each of these inputs. *Id.* at 7-8. What is more, it remains unclear the extent to which PRT’s costs were included in those national averages. *Id.* at 6. In sum, the network in Puerto Rico costs significantly more to construct and operate than a comparable mainland network.

Similarly, with respect to the limited state-specific data incorporated in the non-rural mechanism, such inputs are based on mainland assumptions that significantly skew results for Puerto Rico. Specifically, the non-rural mechanism determines the most significant portions of network costs based on the location of customers relative to providers' wire centers. Yet the non-rural mechanism equates longer loops with higher costs, an assumption that is generally accurate in the continental United States, but does not reflect conditions in insular areas.²¹ As the Rural Task Force explained,

In contrast to the majority of [r]ural [c]arriers in the continental United States which might generally be characterized as having long loops to service their sparsely populated service areas, Alaska and the insular [t]erritories generally have shorter loops which may carry a much higher cost per foot. What Alaska and insular [t]erritories may save in having shorter loops is more than offset by additional costs that can be attributed to their geography and other special and sometimes unique factors. *White Paper 2* at 29-30.

Further, even if this key assumption were correct for Puerto Rico, the non-rural mechanism cannot accurately reflect PRT's costs in instances in which the necessary inputs are unavailable or of questionable reliability. The TRB has explained that accurate customer location data are not available in insular areas because Puerto Rico does "not have a systemic addressing system" and "[a customer's] address is not likely to have any relationship with the location of the addressee." Letter from Phoebe Forsythe Isales, Telecommunications Regulatory Board of Puerto Rico, to William E. Kennard, Chairman, FCC (Apr. 22, 1998). Actual residences in Puerto Rico often are not located on the specific street or at the specific location suggested by the mailing addresses. In many instances, homes are further from the road – and

²¹ *Federal-State Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, ¶ 15 n.31 ("*Remand Order*") ("cost of providing service is largely a function of population density and distance"); *Blessing Declaration* at 9.

thus further from telecommunications infrastructure – than suggested by a review of street addresses. The U.S. Census Bureau corroborates these concerns about the reliability of address location data in Puerto Rico, including the complications caused by the prevalence of Spanish style addresses, and the different address systems used in Puerto Rico. *See Blessing Declaration* at 10.

The results under the non-rural mechanism substantiate the Commission’s concerns with the application of that mechanism to insular areas. Most strikingly, the mechanism illogically calculates that the cost of serving Puerto Rico’s predominantly rural, mountainous study area is *less* than the cost of serving the study area that includes metropolitan San Juan and Ponce. *Petition for Reconsideration of the Puerto Rico Telephone Company, Inc., CC Docket No. 96-45, at 3-4 (Jan. 3, 2000).*

The combination of these flawed inputs and assumptions is that Puerto Rico’s monthly cost per loop is underestimated by almost \$10: in total, Puerto Rico’s actual costs are two and a one half standard deviations higher than the non-rural mechanism suggests. *Blessing Declaration* at 11-12. This is in stark contrast to states that receive support under the non-rural mechanism, in which the non-rural mechanism estimates loop costs \$3.42 higher than actual loop costs (\$31.07 compared to \$27.65). *Id.*

C. Insular Areas are Disproportionately Affected by the Non-Rural Mechanism

Under the original universal service high-cost loop mechanism, PRT received the second highest amount of high-cost loop support of any jurisdiction nationwide, approximately \$50

million annually.²² The *Notice* explains that the revised non-rural mechanism has eliminated all high-cost loop support to Puerto Rico, an outcome inextricably linked to the fact that Puerto Rico is the only high-cost insular area forced to calculate its support under the non-rural mechanism. *See Notice*, ¶ 36 n.108. This result has raised concerns even among disinterested parties: the New York Public Service Commission in 1999 called for a more thorough examination of the reasons for this funding deviation to ensure that telephone customers in Puerto Rico are not denied needed support as the Commission transitions to its new high-cost mechanism.²³ Even though the adoption of the non-rural mechanism resulted in the reduction of funding in a number of jurisdictions, Puerto Rico accounted for 79 percent of funding lost nationwide.²⁴

A comparison of the actual operating costs of other non-rural jurisdictions further calls attention to the disparate treatment of Puerto Rico.²⁵ Idaho's actual per-line costs are approximately 15 percent lower than Puerto Rico's actual costs, yet Idaho receives \$2.40 per-line

²² See FCC, Federal-State Joint Board, *Universal Service Monitoring Report*, CC Docket No. 98-202, 3-18 (Table 3.6) (May 2005) (“*2005 Monitoring Report*”) (showing Puerto Rico's total high-cost loop support payments in 2000 of \$50,570,226); *see also Blessing Declaration* at 3.

²³ See New York Department of Public Service Comments, CC Docket No. 96-45, at 2 & n.2 (Dec. 1, 1999) (“Serious questions are raised by the fact that [PRT does not] qualify for support under the Commission's new high cost mechanism.”).

²⁴ See FCC, Federal-State Joint Board, *Universal Service Monitoring Report*, CC Docket No. 98-202, at 3-131 to -138 (Table 3.30) (Oct. 2002) (detailing the total hold harmless support received by non-rural carriers).

²⁵ See *2005 Monitoring Report* at 3-28 (Table 3.16). Overall, Puerto Rico has the ninth highest actual cost per loop, behind only four mainland states: Arkansas, Mississippi, South Dakota, and Wyoming. *Id.* at 3-29 (Table 3.17). Four insular and remote areas also have greater average costs: Alaska, American Samoa, Guam, and the Virgin Islands. This cluster of insular carriers among the top ten most expensive jurisdictions in the nation further highlights the unique and challenging conditions in insular areas. The fifth insular area, the Northern Mariana Islands, as recently as 1999 had the third highest cost per loop behind only Puerto Rico and the Virgin Islands. *Id.* at 3-33 (Table 3.21).

high-cost loop support under the non-rural mechanism. *2005 Monitoring Report* at 3-28 to 29 (Tables 3.16, 3.17). South Dakota has almost identical actual costs to Puerto Rico and receives \$3.39 per-line in high-cost loop support. *Id.* In all, Puerto Rico is one of only six jurisdictions that receive no high-cost loop support from either the rural or non-rural high-cost support mechanisms.²⁶ A comparison to other insular areas further demonstrates the disparate treatment of Puerto Rico: the Virgin Islands and Guam receive the first- and third-highest per-line support levels, respectively, of any jurisdiction.²⁷

IV. DEFICIENCIES IN THE HIGH-COST PROGRAM DIRECTLY HARM PUERTO RICO

For over two decades, Puerto Rico was one of the clearly identifiable success stories for the federal universal service program: the Commission's high-cost policies led to the advancement in wireline penetration rates in Puerto Rico from 25 percent to over 70 percent. That advancement, however, came to an abrupt end at the same time that high-cost loop support to Puerto Rico ceased. In fact, the current wireline penetration rate in Puerto Rico has fallen closer to 60 percent.

The *Notice* acknowledges that the stagnation in Puerto Rico's wireline penetration rates evidences that the Congressional mandate "that consumers in insular areas ... have access to affordable telecommunications and information services ... is not being met and that the Commission could be doing more to help the residents of Puerto Rico." *Notice*, ¶ 33. One and one half years ago, Commissioner (now Chairman) Martin called for prompt action to address

²⁶ *Trends in Telephone Service* at 19-8 (Table 19.4). The others are Connecticut, Delaware, the District of Columbia, New Jersey, and Rhode Island – all of which have significantly lower average loop costs.

²⁷ *2005 Monitoring Report* at 3-28 (Table 3.16). The state that receives the second-most support is Alaska, which faces many of the same challenges as insular areas.

high-cost support in Puerto Rico given the “exceedingly low subscribership” rate on the island. *Order on Reconsideration* at 23847, Statement of Comm’r Martin. PRT strongly agrees that the *status quo* is adversely affecting the citizens of Puerto Rico and requires swift FCC action.

A. Low Subscribership Levels Evidence a Failure of Federal Universal Service Policies

In the past, the Commission has concluded that high national subscribership rates demonstrate that it has satisfied its section 254 mandate. *See First Report and Order*, ¶ 8. As a corollary, the Commission has found an affirmative obligation to act in areas in which its national policies do not ensure high subscribership levels. *See, e.g., Twelfth Report and Order*.

In the *First Report and Order*, the Commission concluded that “subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates.” *First Report and Order*, ¶ 112. The Joint Board, in its *First Recommended Decision*, also found “a general correlation between subscribership level and affordability.” *First Recommended Decision*, ¶ 127. More recently, the *Ninth Report and Order Remand Order* relied on the fact that “[l]ocal telephone service subscribership is currently at 95.3%” to support its conclusion that “the federal high-cost support system has proved sufficient to preserve and advance universal service.”²⁸

The Commission has further found a federal obligation to “address instances of low or declining subscribership levels” and take such action as it deems “necessary to fulfill the requirements of section 254.” *First Report and Order*, ¶¶ 120-21. To that end, the 1999 *Unserved and Underserved Areas* proceeding was designed to study and address low

²⁸ *Remand Order*, ¶ 105. Tellingly, the *Remand Order*, as well as a GAO Report that the FCC relied heavily upon, do not include an empirical analysis of conditions in Puerto Rico.

subscribership in insular areas and tribal lands. *Unserved and Underserved Areas Notice*, ¶¶ 135-47.

Seemingly, within every discussion of areas with low subscribership, the Commission singles out Puerto Rico. The *First Report and Order* pledged to “examine ways to improve subscribership in” areas where penetration rates were “particularly low,” explicitly citing Puerto Rico. *First Report and Order*, ¶ 415. In doing so, the Commission more broadly found that “insular areas generally have subscribership levels that are lower than the national average.” *Id.*, ¶ 112. In 2000, the Commission again pledged to “continue to examine and address the causes of low subscribership ... in insular areas.” *Twelfth Report and Order*, ¶ 11. This *Notice* is fully consistent with the FCC’s statement of policy and precedent that the universal service program should ensure mainland-level subscribership levels in all areas of the country.

B. Puerto Rico’s Wireline Subscribership Level Demonstrates the Need for Targeted Federal Action

The nationwide penetration rate currently exceeds 94 percent, approximately 30 percentage points higher than the wireline penetration rate in Puerto Rico. *See infra* Section V.A. This disparity is made starker by the fact that the national penetration rate exceeded 70 percent way back in the 1960s.²⁹

Indeed, the penetration rate in Puerto Rico falls far below all comparable metrics no matter how it is analyzed. On a state-by-state basis, only three states have penetration rates below 90 percent, the lowest of which is Arkansas (87.4 percent). *Telephone Subscribership in the United States*, Industry Analysis and Technology Division, Wireline Competition Bureau, at 8 (Table 2) (Nov. 7, 2005) (“*November Subscribership Report*”). Obviously, this penetration

²⁹ *Trends in Telephone Service* at 16-6 (Table 16.4) (noting that the percentage of households with telephones increased from 61.8 percent to 78.3 percent from 1950 to 1960).

rate is still significantly higher than Puerto Rico's. An analysis of federal subscribership data by ethnicity and by income further establishes the unique conditions in Puerto Rico. Nationwide, the penetration rate of Hispanic households is lower than that of all other ethnicity groups tracked by the Commission (89.1 percent), yet this national average for Hispanics far exceeds the penetration rate on predominately Hispanic Puerto Rico. *Id.* at 31 (Table 4). Similarly, federal subscribership reports establish a link between income and subscribership levels, yet the penetration rate for mainland poorer households (total annual income from \$15,000 to \$19,999) is 92.2 percent, far exceeding Puerto Rico's subscribership level. *Id.*

A closer review of these statistics in Puerto Rico reveals that the island-wide penetration rate is not even representative of the much more problematic situation in many areas on the island. HTTP correctly stresses that many communities in the mountainous interior and the underdeveloped coastal regions have much lower penetration rates, focusing on Guanica, a "town in the southern part of the Island, [that] has only a 52.3 percent penetration rate." *HTTP Letter* at 1. TRB notes that the penetration rates in such towns are not out of the ordinary as "[v]arious [m]unicipalities have penetration rates lower than 50 percent." *TRB Letter* at 2. A map of Puerto Rico included in Appendix B provides further evidence of the disparity of penetration rates throughout the island, and the sheer number of jurisdictions with sub-70 percent penetration rates. *See* Appendix B (noting the penetration rate drops to as low as 46.0 percent in Aguirre along the southern coast, 39.4 percent in Ceiba along the eastern coast, and 51.8 percent in Comerio within the mountainous interior). These conditions highlight former Commissioner Kathleen Abernathy's call "that it is time to consider bolder action to meet the needs of insular areas." *Notice, Separate Statement of Comm'r Kathleen Q. Abernathy.*

V. THE FCC SHOULD IMPLEMENT ITS TENTATIVE CONCLUSION AND ESTABLISH A NON-RURAL INSULAR MECHANISM BASED ON ACTUAL COSTS

In order to implement fully section 254's universal service mandate, the Commission should adopt its tentative conclusion to establish a non-rural insular mechanism based on actual costs.

A. Loop Support Is Critical to Puerto Rico's Efforts To Fulfill the Promise of Universal Service

An analysis of historical subscribership levels in Puerto Rico over the past thirty years shows a causal connection between the availability of high-cost loop funding and increased wireline subscribership. To that end, the *Notice* correctly concludes that the FCC's current universal service policy has had distinct effects on Puerto Rico, noting a "correlation between the recent decline in Puerto Rico's subscribership rates and the reduction of Puerto Rico's high-cost support." *Notice*, ¶ 33.

The TRB has reported that wireline penetration rates in Puerto Rico jumped from approximately 25 percent in the mid-1970s to over 76 percent in 1997. *TRB Letter* at 2. The TRB attributes this "rapid rise" to "the combined effort of the FCC's high-cost program, the TRB, and the incumbent carrier Puerto Rico Telephone (PRT)." *Id.* In particular, high-cost support provided needed funds to expand and modernize the island's telecommunications infrastructure. Former FCC Commissioner Harold W. Furchtgott-Roth's examination of subscribership levels in Puerto Rico reveals that they increased every year from 1980 to 1997. Appendix C, Declaration of Harold W. Furchtgott-Roth, at 8 ("*Furchtgott-Roth Declaration*"). Moreover, he found that the penetration rate in Puerto Rico peaked in the "last year under the universal service system that was replaced by current programs." *Id.* Yet today, wireline

penetration rates in Puerto Rico have regressed to approximately 60.9 percent as of December 2005.³⁰

In this same interval, PRT's capital expenditures and network infrastructure investments have seen an interrelated decline. From 1996 to 2003, PRT's capital expenditures were reduced from \$190 million to less than \$70 million. *See* Letter from Nancy J. Victory, Counsel for PRT, to Jeffrey Carlisle, Chief, FCC Wireline Competition Bureau, CC Docket No. 96-45, at Attach. B (Nov. 4, 2004). Former Commissioner Furchtgott-Roth notes that investment in Puerto Rico is "influenced by the availability of federal universal service funds." *Furchtgott-Roth Declaration* at 11. PRT remains dedicated to modernizing and upgrading its facilities and extending the reach of its network, but its ability to do so as aggressively as it has in the past has been compromised by the elimination of federal support.

The effects of Puerto Rico's failure to receive loop funding over the past six years reinforce the urgent need for loop support. The *Notice* properly concludes that direct high-cost loop support to Puerto Rico is necessary to meet section 254's insular mandate and to more generally advance universal service in Puerto Rico. Ubiquitous network availability is a condition precedent to high subscribership, and high-cost loop support provides the necessary resources to ensure that network investment and network facilities are extended and maintained

³⁰ *See* Appendix B. The FCC releases three national studies on subscribership each year, but these reports do not include insular areas. *See, e.g., November Subscribership Report*. The 2000 U.S. Census results are the most recent publicly available data for Puerto Rico, which found a 76.2 percent penetration rate in Puerto Rico compared to a 97.6 percent national penetration rate. U.S. Census Bureau, Census 2000 Summary File 4 (SF 4), at Table GCT-H8 (Occupancy, Equipment, and Utilization Characteristics of Occupied Housing Units: 2000), *available at*, http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=D&-ds_name=D&-_lang=en&-mt_name=DEC_2000_SF4_U_GCTH8_US9. Absent more recent data, Puerto Rico penetration data are based on the availability of PRT wireline telephone service, and do not include competitive carriers or wireless providers.

in high-cost areas like Puerto Rico. Wireline infrastructure is also critical to efforts to provide broadband access to rural and remote Puerto Rico.

Loop support also serves as a necessary check against unaffordable rate increases. Absent sufficient federal support, carriers are forced to choose between fully investing in network development and expansion and raising rates to levels that could further diminish subscribership levels. This is particularly true in Puerto Rico where, according to the TRB, “any increase in rates or charges risks triggering additional drops in the subscribership levels.” *TRB Letter* at 2.

On the mainland, loop support is used primarily for maintenance and upgrading of network facilities. In Puerto Rico, loop support takes on an even greater role beyond those critical mainland functions, because network facilities in Puerto Rico have to be extended and expanded to underserved and unserved communities. To that end, the FCC explains that loop support “will enable PRT[] to construct new network and loop infrastructure to unserved areas, update its existing facilities, improve quality of service, maintain affordable rates, and educate and solicit potential first-time telephone customers.” *Notice*, ¶ 34.

Representative of the heightened challenges in Puerto Rico, the TRB estimates that approximately 200 communities have access to “no existing telephone infrastructure at all,” because of their remote location on the island. *TRB Letter* at 2. These isolated communities generally have no access to either reliable wireline or wireless service given their location and economic profile. The challenges faced by PRT in extending service to only ten homes in the remote communities of Yauco and Jayuya last year demonstrate the magnitude of problems faced in these isolated areas. To reach these ten homes, PRT’s crew had to install over 100 poles and several miles of cable by hand through steep terrain and heavy vegetation after specialized

4x4 equipment proved unable to navigate this harsh environment. During this project, PRT lost two vehicles, which fell off a cliff in these remote areas. The TRB rightly concludes that loop support is critical to “allow for adequate maintenance and appropriate network improvements as well as continued build-out to unserved communities.” *Id.* at 4.

B. The Adoption of an Actual Cost-Based Mechanism Is the Most Practical Approach

The *Notice* tentatively concludes that it “should establish a new interim support mechanism for non-rural insular areas based on embedded costs.” *Notice*, ¶ 33. Given the factual record in this proceeding, that is the only readily available option to the FCC that will produce results which satisfy the section 254 insular mandate.

1. *The Commission Should Use Actual Costs as the Basis for the New Mechanism, and Should Avoid the Establishment of Any New Untested Types of Mechanisms or Substantial Variations of Current Mechanisms*

The Commission already has experience with an actual cost-based mechanism for Puerto Rico, and it should utilize this existing mechanism for insular areas, rather than undertaking the burdensome and uncertain process of creating a new methodology. The creation of a new methodology or mechanism would be an extremely time- and resource-intensive undertaking, as demonstrated by the process required to implement the forward-looking economic cost mechanism for non-rural carriers. Former Commissioner Furchtgott-Roth explains that “it would likely take years to construct the model and to complete the necessary public notice and comment process.” *Furchtgott-Roth Declaration* at 19. He further notes that “potential litigation surrounding the model could further delay unambiguous use of the model.” *Id.* In addition, if the Commission were to establish a novel mechanism, it would be untested and would provide unknown results that could produce unintended consequences.

The Commission has also recognized the value of administrative simplicity and declined in the past to adopt overly burdensome universal service proposals. Especially where, as here, an existing mechanism can be used to meet section 254's universal service mandate, finite resources should not be expended to develop and test a new model that attempts to accurately reflect Puerto Rico's costs. Former Commissioner Furchtgott-Roth concludes that a new model would "be unwise," particularly given that "[t]he peculiarities of each insular area make it difficult to construct a common cost model." *Id.* at 19.

Because of such uncertainty, any new mechanism would run the risk of not meeting section 254's requirement that universal service support be both sufficient and predictable. For these reasons, the Commission should use an actual cost-based methodology, which it has invested substantial time and resources in creating and refining.³¹

2. The Adoption of a Non-Rural Insular Mechanism Does Not Undermine or Affect National High-Cost Policy

As a general policy matter, the FCC has determined that the appropriate basis for high-cost support is forward-looking economic costs. *First Report and Order*, ¶ 199. Due to limitations within the FCC's current forward-looking cost model, however, only a handful of the nation's largest carriers receive support pursuant to their forward-looking costs. Most significantly, the Commission has repeatedly found it appropriate to maintain support for rural

³¹ The use of actual costs further ensures the similar treatment of all insular carriers. As the *Notice* acknowledges, "PRT[] is the only incumbent carrier serving a high-cost insular area that is not currently classified as a rural carrier under the rural high-cost loop mechanism." *Notice*, ¶ 34. Adopting a non-rural insular mechanism that mirrors the rural methodology would ensure consistency. There is no need to shift all insular carriers to the new non-rural insular mechanism, given the administratively complexity such a transition would have on the rural mechanism. The Commission has also previously declined to allow non-rural PRT to receive support directly under the rural mechanism. *Remand Order*, ¶¶ 139-40; *Order on Reconsideration*, ¶ 20. That decision need not be revisited here.

carriers based upon actual costs.³² For analogous reasons, the current forward-looking cost-based mechanism is ill-suited to providing support for non-rural insular areas. The recognition that the FCC's current program cannot be accurately applied to all carriers does not call into question or impact the prudence of the underlying policy. Nor does the establishment of a non-rural insular mechanism limit the ability of the Commission to continue to work on the design of a forward-looking cost-based mechanism that accurately reflects the unique cost structures of all rural and insular carriers.

3. *The Notice's Global Review of the Non-Rural Mechanism Is an Inappropriate Venue In Which To Address Puerto Rico's Concerns*

Similarly, the Commission appropriately disavows any possibility of altering the non-rural mechanism in this proceeding to accurately reflect non-rural insular costs.³³ By deferring consideration of PRT's concerns vis-à-vis the inputs and operation of the non-rural mechanism, the Commission acknowledges that the alterations to the national mechanism necessary to provide accurate results for insular areas would unnecessarily complicate the FCC's mission in this proceeding. *Notice*, ¶ 30 n.86. Rather, the Commission has properly concluded that the deficiencies in the non-rural mechanism with respect to insular carriers should be addressed through the creation of a separate non-rural insular mechanism. The questions raised in the

³² *Rural Task Force Order*, ¶¶ 5, 25 (“Because rural carriers generally have higher operating and equipment costs, which are attributable to lower subscriber density, small exchanges, and a lack of economies of scale, the Commission recognized that additional effort would be needed to develop a forward-looking mechanism appropriate for rural carriers.”).

³³ *See Notice*, ¶ 30 n.86 (“We note that PRT[] also requests the Commission to reexamine the high-cost model ... to address its impact on Puerto Rico and its ability ... to accurately identify Puerto Rico's costs. Because the creation of a non-rural insular support mechanism as proposed by PRT[] may render PRT[]'s request to reexamine the model unnecessary, we will defer consideration of this PRT[] request at this time.”) (internal citations omitted).

broader *Notice* – *i.e.*, the ability of the current mechanism to satisfy each of the section 254 principles and the appropriate type and size benchmark – do not speak to PRT’s specific concern that the mainland-based model is inherently flawed as applied to insular carriers.³⁴

C. Other FCC Universal Service Programs Do Not Provide Appropriate or Sufficient Funding to Insular Areas to Offset Lost Support

Given the significant challenges faced by Puerto Rico, the full range of federal universal service funding – under each component of the federal universal service program – is warranted and necessary to ensure that Puerto Rico has the opportunity to increase subscribership to mainland levels, and expand, maintain, and modernize its network facilities. In response to its statutory mandate, the Commission has created a set of complementary universal service programs that work in conjunction to ensure that all consumers have access to affordable and reasonably comparable telecommunications services. In recognition of the complementary nature of these programs, the FCC aptly found that “a special support mechanism, in combination with the Commission’s low-income program, will help to combat the problem of low subscribership in Puerto Rico.” *Notice*, ¶ 33.

Consistent with the FCC’s universal service program design, funding pursuant to one of the Commission’s universal service mechanism cannot compensate for lack of necessary support under another mechanism, nor does it inform the proper level of funding under a different mechanism that, by definition, serves a different programmatic purpose. All three major types of universal service support – high-cost loop, interstate access, and low-income – are available to mainland carriers and their customers to meet section 254’s universal service goals, and the vast

³⁴ See *Notice*, ¶ 8 (section 254 principles), ¶ 20 (affordability benchmark).

majority of high-cost jurisdictions receive all three types of support.³⁵ Prior to the transition to the non-rural mechanism, Puerto Rico also received significant funding from all three categories of support, consistent with other high-cost communities as well as the cost characteristics of the island.

1. *Low-Income Support Is Not a Stand-Alone Solution to Puerto Rico's Insular Challenges*

The FCC's Lifeline and Link-Up low-income support programs provide discounted service directly to eligible end-user customers, helping "low-income consumers to get connected and stay connected to the telecommunications network." *Federal-State Board on Universal Service*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, 14 FCC Rcd 8078, ¶ 39 (1999).

In 2004, 110,000 households in Puerto Rico received approximately \$11.8 million in total low-income support payments to offset the installation and/or monthly costs of local telephone service.³⁶ This places Puerto Rico among the top third of jurisdictions in receipt of low-income support, which can be attributed both to the high poverty rate in Puerto Rico and the successful efforts to educate Puerto Rican customers about the availability of Lifeline and Link-Up support by the TRB and carriers serving the island. Despite the territory's limited resources, Puerto Rico

³⁵ Carriers do not receive low-income support directly. It is a pass-through to consumers. However, for purposes of this analysis, low-income funding received by consumers in a carrier's study area is attributed to that carrier.

³⁶ *2005 Monitoring Report* at 2-13 (Table 2.4); USAC, *Results of State Survey on Lifeline and Link-Up Issues: Puerto Rico*, Answer to Question 4, available at <http://www.universalservice.org/li/tools/state-surveys.aspx> ("*Puerto Rico Lifeline and Link-Up Survey*"). An analysis of the number of Lifeline customers compared to the total number of lines in mainland states is provided in Section II, *supra*.

also manages to provide each eligible subscriber an average of \$3.35 in low-income support in addition to basic federal Lifeline support, well above the national state average of \$2.67. *Trends in Telephone Service* at 19-11 (Table 19.7).

These funds are indisputably essential to ensure that Puerto Rico's low-income consumers have continued access to telephone service, but these monies are not designed to substitute for the funds carriers need to offset the costs of maintaining and expanding telecommunications networks. The TRB has cautioned that low-income support is a "complement to, not a supplement for, high-cost support." *TRB Letter* at 4.

In particular, because low-income support programs are a direct pass-through to customers, they are not intended for network development, expansion, or maintenance, nor can such funds be used for these purposes. In Puerto Rico, as evidenced by the costly build-out to Yauco and Jayuya described above, the per-loop installation costs in remote areas can be prohibitively expensive. The FCC's Link-Up program, however, provides only a tiny fraction of that amount.³⁷ Furthermore, low-income support can reach only those consumers in areas where the telecommunications infrastructure already exists and is available. As described above, in Puerto Rico, over 200 communities have no access to telecommunications infrastructure.

More fundamentally, low-income programs provide no support for those customers that are high-cost, but not necessarily low income. The TRB has informed the Commission that while the Lifeline program has been effective in Puerto Rico, these programs alone "ha[ve] not

³⁷ Low-income customers can receive a maximum of \$30 towards the cost of initiating service under the Link-Up program, further demonstrating that the program is designed to offset the set-up associated with installation of a new telephone where the infrastructure is preexisting, not the carrier's costs to build out service to unserved communities. *See* 47 C.F.R. § 54.411(a)(1).

necessarily increased the overall wireline penetration rate.” USAC, *Results of State Survey on Lifeline and Link-Up Issues: Puerto Rico*, Answer to Question 2, available at <http://www.universalservice.org/li/tools/state-surveys.aspx> (“*Puerto Rico Lifeline and Link-Up Survey*”).

2. *Interstate Access Support Mechanisms Are Incapable of Offsetting High Intrastate Loop Costs*

The FCC’s two interstate access support mechanisms – Interstate Common Line Support (“ICLS”) and Interstate Access Support (“IAS”) – are designed “to provide explicit support to ensure reasonably affordable interstate rates” by reducing long distance and interstate access costs. *2005 Monitoring Report* at 3-8. The Commission created the ICLS mechanism to replace the inefficient carrier common line charge and establish an explicit mechanism for rate-of-return carriers that facilitates interexchange service and allows carriers to recover interstate common line costs.³⁸ Fundamentally, ICLS provides “support directed to the rate-of-return carriers’ interstate common line costs.” *Id.*, ¶ 61. In total, PRT received approximately \$55 million in ICLS funds in 2005 to offset the carrier’s significant interstate access costs.³⁹ Nevertheless, ICLS cannot, nor is it intended to, compensate for the costs of Puerto Rico’s local loops. The need for both interstate access and local loop support is not unique to Puerto Rico, and the level

³⁸ See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122, ¶ 58 (2004) (“ICLS is specifically designed to preserve incumbent rate-of-return carriers’ ability to provide affordable, quality services to rural consumers while allowing carriers to recover their common line revenue requirements through a more efficient rate structure.”). ICLS now includes Long Term Support, an earlier federal program that offset common line revenue requirements. IAS is the corresponding support mechanism for price cap carriers. 47 C.F.R. § 54.801.

³⁹ *Notice*, ¶ 36, n.108; see USAC, Quarterly Administrative Filing 2006, First Quarter (1Q) Appendices, HC09 (filed November 2, 2005) available at www.universalservice.org/overview/filings.

of ICLS support in Puerto Rico is of no consequence to the appropriate level of high-cost loop support.⁴⁰

3. State Universal Service Programs Are Limited

As detailed above, Puerto Rico has established a strong universal service program on the island providing direct benefits to over 100,000 low-income households, and the TRB is evaluating the feasibility of increasing that subsidy.⁴¹ Nevertheless, it is improbable that Puerto Rico will ever be able to establish a high-cost loop support mechanism similar to its federal counterpart, given its limited resources.

The Commission has explained that the internal resources of some states severely limit their ability to develop robust intrastate universal service mechanisms. *See Remand Order*, ¶ 20. Puerto Rico is a prime example of a jurisdiction lacking the necessary resources to develop an aggressive intrastate funding mechanism. In Puerto Rico, there are neither low-cost communities to offset the costs of high-cost communities, nor low-cost carriers to offset the costs of high-cost

⁴⁰ In its *Notice*, the Commission also states that PRT assesses a subscriber line charge (“SLC”) on residential and business lines. *Notice*, ¶ 36, n.108. All carriers, both rural and non-rural, high-cost and not high-cost, assess SLCs, which are capped at \$6.50 for all residential and single business lines. *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, ¶ 45 (2001) (explaining that the SLC is capped so that all consumers pay the same amount, regardless of the cost difference in providing service). As the Commission acknowledges in the *Notice*, the purpose of the SLC is “to recover the *interstate*-allocated portion of local loop costs.” *Notice*, ¶ 36, n.108 (emphasis added). The SLC is not designed to compensate high-cost carriers for the expense of providing service, nor does it assist carriers in recovering the intrastate costs of their loops. As such, PRT’s receipt of SLC revenues is irrelevant to the determination of which high-cost loop support mechanism the Commission should use in Puerto Rico.

⁴¹ *Puerto Rico Lifeline and Link-Up Survey*, Answer to Question 4. In the last two years, Puerto Rico’s universal service program has provided very limited funding for service to isolated communities. Such funding is distinct from state high-cost loop support programs available on the mainland, and is not sufficient to address the exceedingly high costs of serving these communities.

carriers. Moreover, the lack of disposable income in Puerto Rico limits the local government's ability to raise adequate funding from its rate base. *See* Section II, *supra*. In short, despite Puerto Rico's best efforts, its state fund cannot compensate PRT or other carriers serving Puerto Rico for lost federal high-cost loop support.

VI. THE COMMISSION SHOULD EXPEDITIOUSLY ADOPT THE NON-RURAL INSULAR MECHANISM AS PROPOSED

The Commission should move swiftly to establish a separate non-rural insular mechanism modeled on the rural actual cost-based mechanism, as proposed by PRT. In doing so, the Commission need not extend unique provisions of the rural mechanism that are not applicable to a non-rural insular mechanism. Importantly, this new mechanism would be separate from the existing rural mechanism, and would not impact funding levels under that program in any way. In addition, the adoption of a new non-rural insular mechanism would not materially affect the size of the universal service fund nor would it prejudice any long-term universal service reform efforts.

A. The Non-Rural Insular Mechanism Should Be Modeled on, but Distinct from, the Rural Mechanism

As proposed in the *Insular White Paper*, the Commission should adopt an actual cost-based support mechanism for non-rural insular carriers. The mechanism should be modeled on the existing rural high-cost mechanism.⁴² Carriers should be eligible to receive support under only one of the three loop programs (rural, non-rural, or non-rural insular) for a given study area. As such, eligible telecommunications carriers serving non-rural insular areas would only be

⁴² *Notice*, ¶ 30 (“[T]his interim mechanism should be ‘patterned after, but distinct from,’ the existing mechanism for rural telephone companies.” (quoting *Insular White Paper* at 28)). Two additional rules – addressing state certification and competitive carrier eligibility – are appropriate. Appendix D includes a full set of proposed rules.

eligible to receive support under the new mechanism.⁴³ Consistent with the benchmark used successfully in the rural mechanism, funding would be available to non-rural insular carriers with average unseparated costs per loop exceeding 115 percent of the national average loop cost. *Notice*, ¶ 37. This mechanism produces known and equitable results, and there is no need to revisit the appropriate benchmark or funding basis in this proceeding.

1. *The Commission Should Incorporate the Frozen National Loop Average into the Non-Rural Insular Mechanism*

To simplify the administration of the new mechanism, the Commission should incorporate the frozen national loop average (\$240) used in the rural mechanism. *Notice*, ¶ 37. For the rural mechanism, the FCC froze the national average in 2001. 47 C.F.R. § 36.622(a). The same rationale for adopting the freeze for rural carriers applies equally in this instance, providing carriers with greater certainty and predictability as to their eligibility for high-cost loop support and recognizing that the national average had experienced only minor fluctuations in recent years. *Rural Task Force Order*, ¶¶ 55, 57. In addition, the use of the frozen national average “assist[s] carriers in short- and long-term planning for infrastructure investment,” and such certainty is particularly important to the reversal in wireline penetration trends in Puerto Rico. *Id.*, ¶¶ 55, 59; *see also* Section IV.⁴⁴

⁴³ Proposed section 54.1001 limits eligibility to “eligible telecommunications carriers that serve islands that are territories or commonwealths of the United States, and are not classified as a ‘rural telephone company’ as defined in § 51.5 of this chapter.” *Insular White Paper*, Appendix A. To ensure that carriers are not eligible to receive support under both the non-rural and non-rural insular mechanism, it may be necessary to include a specific limitation in section 54.309 noting that non-rural insular carriers are ineligible to receive support pursuant to that section. *See* 47 C.F.R. § 54.309 (stating that non-rural carriers shall receive universal service support based on forward-looking economic costs).

⁴⁴ Because this program is separate and distinct from the rural mechanism, there is no need to adjust the effective national average cost per loop if demand under the rural mechanism exceeds capped support levels. Rather, the fixed \$240 figure should be used annually under the

Administratively, incorporating the frozen national average into the new mechanism will be far simpler and less burdensome on carriers and the program administrator than allowing the average to fluctuate. Currently, the program administrator is not required to determine the national average on a quarterly basis. *See Rural Task Force Order*, ¶ 59. Moreover, additional information would need to be collected from all non-rural carriers to unfreeze the national average.⁴⁵ There is no policy reason to require the re-initiation of this resource-intensive process.

2. Section 254 Provides All Relevant Conditions on Receipt of High-Cost Loop Support

Section 254(e) of the Commission's rules delineates all the necessary conditions for receipt of high-cost loop support, requiring support to be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e). There is no need to further condition disbursement of funds to PRT, nor does any other carrier receive conditioned high-cost loop support. *Notice*, ¶ 37. Moreover, PRT's proposal is for the reinstatement of high-cost loop support to historic levels; it is not a request for

non-rural insular mechanism. *See Appendix D*. Similarly, there is no basis, nor an administratively simple or fair means by which, to include support from the new non-rural insular mechanism under the funding cap of an entirely separate \$1.9 billion rural high-cost mechanism. *Notice*, ¶ 36. Further, until the FCC develops greater familiarity with the new mechanism and the needs of non-rural insular areas, it would be premature to establish a new cap for the non-rural insular mechanism. The Commission should, therefore, monitor the operation of the new program and determine in a subsequent proceeding if a cap of the new mechanism is warranted. The limited nature of the new mechanism – both in terms of participants and funding levels – should alleviate any concerns about fund growth in the short-term.

⁴⁵ *See Rural Task Force Order*, ¶ 59 (permitting non-rural carriers to submit on an annual, instead of a quarterly basis the loop cost data listed in section 36.611 of the Commission's rules). Section 36.611 requires carriers to submit their unseparated corporate operations expenses, operating taxes, unseparated gross telecommunications plant investment, unseparated accumulated depreciation and noncurrent deferred federal income taxes attributable to local unseparated telecommunications plant investment, among other data. 47 C.F.R. § 36.611.

special relief or supplemental funding that could potentially justify the imposition of additional conditions or requirements.

B. The Adoption of the Proposed Insular Mechanism Would Not Adversely Affect the Overall Size of the Universal Service Fund or Prejudice Future Reform Efforts

The limited nature of the non-rural insular mechanism significantly minimizes any risks or concerns associated with its establishment. Specifically, the adoption of a non-rural insular mechanism would not negatively impact the administration of the universal service fund, nor would it limit the ability of the Commission to adopt comprehensive universal service reform in future proceedings.

1. *The Non-Rural Insular Mechanism Will Not Result in a Significant Increase in the Size of the Universal Service Fund*

The *Notice* accurately concludes that “adopting a non-rural insular mechanism would have a limited impact on the universal service fund.” *Notice*, ¶ 34. The *Notice* found that “because this mechanism would only affect carriers operating in the Commonwealth of Puerto Rico ... we agree with PRT[] that the impact would be limited because the total cost of the new mechanism would be less than one percent of the total fund.” *Id.*

The non-rural insular mechanism would reinstate funding to non-rural insular areas well below 2000 levels (\$50 million): approximately \$33 million in annual support to PRT based upon 2004 data.⁴⁶ This amounts to less than one percent of the total high-cost program, which was over \$3.487 billion in 2004.⁴⁷ Further, because of the targeted nature of this new

⁴⁶ The Commission is correct to note that a number of competitive carriers are eligible telecommunications carriers (“ETCs”) in Puerto Rico and would also be eligible for support under the new mechanism. *See* n. 42.

⁴⁷ *2005 Monitoring Report* at 1-36 (Table 1.11). *See US West Communications, Inc. and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of “Study Area”*

mechanism to a single jurisdiction, there is no basis for concern about containing future runaway growth of this fund. The fact that the proposed mechanism would only re-instate high-cost loop support to PRT to lower than historic levels should be taken into account when considering the relative size of the non-rural insular mechanism.

2. Adoption of a Non-Rural Insular Mechanism Would Not Prejudge Comprehensive Reform of the Universal Service Program

The establishment of a non-rural insular mechanism does not prejudice efforts by the Commission or the industry to develop an integrated mechanism that accurately reflects the costs of rural, insular, and high-cost areas, nor does it forestall consideration of more global reform of the universal service program in future proceedings.

Specifically, a number of industry members and state members of the Joint Board have signaled their support for comprehensive high-cost reform that could entail delegation of substantial authority to states or otherwise significantly alter the manner in which universal service support is provided to carriers and consumers.⁴⁸ Nonetheless, at this time, a

Contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd 1771, ¶¶ 14-15 (1995) (establishing that "no waiver should cause an annual aggregate shift in [universal service fund] assistance in an amount equal to or greater than one percent of the total [universal service fund], unless the parties can demonstrate extraordinary public interest benefit"); see also Mescalero Apache Telecom, Inc., Waiver of Section 54.305 of the Commission's Rules, Order, 16 FCC Rcd 1312, ¶ 12, n.53 (2001).

⁴⁸ See *Joint Board 2005 Notice*; Ex Parte Presentation of Qwest, CC Docket No. 96-45 (Sept. 21, 2005). A number of proposals on the record would freeze support for states at current levels, and then provide states with that total funding amount as effectively a block grant. The proposals are modeled on a National Association of Regulatory Utility Commissioners ("NARUC") proposal to modify the intercarrier compensation regime that includes a State Allocation Mechanism ("SAM") whereby one statewide mechanism would be used to determine each state's universal service fund allotment for both high cost and low-income programs. States would then have discretion to distribute the funds to carriers operating in their states. The NARUC proposal provides that each state would receive no less than their 2004 level of funding. See Letter from Robert B. Nelson, et. al to Chairman Kevin Martin, CC Docket No. 01-92,

comprehensive solution to all universal service issues has neither been proposed by the Commission, nor has a factual and legal record been developed to justify such an approach.

Accordingly, there is a high probability that at least two high-cost loop mechanisms will be maintained in some form for the foreseeable future. The creation of a third high-cost loop support mechanism that would cure a significant and longstanding gap in the Commission's implementation of section 254 for insular areas, and ensure that a needy community receives predictable and sufficient support, would not preclude or materially affect any reform proposal in a subsequent FCC proceeding.

**C. Expedited FCC Action Is Warranted Given Section 254's
Statutory Requirement and PRT's Pressing Need for Funding**

Given the totality of circumstances with respect to the need for universal service funding in Puerto Rico, the Commission should adopt its tentative conclusion in an expedited manner. Section 254(b)(3) provides the Commission with a clear statutory mandate to address the unique needs of insular areas—a mandate that has gone unfulfilled for ten years. *See Notice*, ¶ 33. This omission should not be allowed to continue any longer.

All three sitting commissioners who participated in the *Notice* have voiced support for prompt action on insular universal service reform. Their unanimity further bolsters the FCC's tentative conclusion.⁴⁹ That conclusion is fully supported by the prior administrative and legal

Appendix C, at 11-12 (May 18, 2005); *Joint Board 2005 Notice*, Appendices A, C, D. A condition precedent to the adoption of such a proposal is that all states have the necessary federal support to satisfy the Commission's basic section 254 obligation. Freezing Puerto Rico's funding levels at \$0.00 in perpetuity would only exacerbate the current challenges faced on the island, and would not meet the FCC's section 254 obligation.

⁴⁹ *See* Section II, *infra*; *see also, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Second Further Notice of Proposed Rulemaking, 14 FCC Rcd 8694, 8722 (1999), Statement of Comm'r Michael K. Powell (stating that the Commission "should make tentative conclusions only when [it is] more sure than not that those tentative

record in this proceeding, and the need for immediate corrective action in Puerto Rico has been advocated for over six years. Most recently, the TRB last year informed Chairman Martin that there “is an urgent need for such support in Puerto Rico.” *TRB Letter* at 1.

VII. CONCLUSION

For the foregoing reasons, consistent with section 254 of the Act, the Commission should move promptly to adopt its tentative conclusion and to establish a non-rural insular mechanism based on actual costs.

Respectfully submitted,

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conclusions should be the ultimate outcome”); *Carriage of Digital Television Broadcast Signals*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2683-84 (2001), Statement of Comm’r Susan Ness (finding a tentative conclusion “gratuitous” when made before the Commission had “collected and analyzed the evidence that would address” the question at issue); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3072 (2002), Statement of Comm’r Michael J. Copps (noting need for the Commission to “understand the implications” before committing to tentative conclusions).